

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

SHYANDREA HESTER and MARY
HESTER,

Plaintiffs,

v.

LOWNDES COUNTY COMMISSION,
CHRISTOPHER BROWN,
EMERGYSTAT, DEPUTY JIMMY
HARRIS, et al.,

Defendants.

CIVIL ACTION NO.:
CV-06-572-WHA

**DEFENDANTS' EMERGYSTAT, INC.'S AND CHRISTOPHER BROWN'S
OBJECTION TO PLAINTIFF'S WITNESSES AND EXHIBITS**

COME NOW the defendants, **Emergystat, Inc. and Christopher Brown**, and object to the Plaintiff's Witness and Exhibit List. As grounds for this objection, this defendant would show unto the Court as follows:

1. On June 7, 2007, counsel for these Defendants received Plaintiff's Witness and Exhibit List.
2. Included within Plaintiff's Witness List was the following witnesses:
 - a. "Lenay Martin;"
 - b. "Donald Richardson, Plaintiff's Expert Witness;" and,
 - c. "Witnesses who have yet to be identified, who were present at the scene of the accident in question and observed the parties at the scene, and who will be identified prior to the date of trial."

3. Included within Plaintiff's Exhibit List was the following exhibit: "Police & Incident Report – Lowndes County Sherriffs Department."

4. Defendants have not had the opportunity to depose any of the witnesses listed in paragraph 2 above.

5. Further, Defendants noticed the deposition of plaintiff's expert, Donald Richardson, after confirming Mr. Richardson's availability with plaintiff's counsel. Plaintiff's counsel cancelled Mr. Richardson's deposition on the morning of Mr. Richardson's deposition and advised he would provide additional dates of availability for the same. To date, Plaintiff has never offered another date to permit Defendants to examine Plaintiff's expert. Furthermore, Plaintiff did not provide a Rule 26 Expert Report Disclosure until May 16, 2007. Defendants have not been given the opportunity to examine Mr. Richardson as to his qualifications, opinions or even personal knowledge regarding this matter. Defendants would be highly prejudiced if the Plaintiff is permitted to offer Mr. Richardson to testify at trial.

6. Further, Defendants have no way of identifying those witnesses described in paragraph 2(c) above. Plaintiff has failed to disclose these persons as required under FRCP Rules 26(a)(1)(A) and 26(a)(3)(A). Defendants have no way of knowing and/or anticipating who these witnesses are, what their opinions are, and whether their opinions are even relevant to the issues of this case. Thus, defendants cannot adequately prepare for examination of these unknown witnesses. Defendants would be highly prejudiced if the plaintiff is permitted to offer these unidentified witnesses to testify at trial.

7. Plaintiff did not serve Rule 26(a)(1) Initial Disclosures until June 7, 2007. Included within Plaintiff's "initial" disclosures was a listing of a "Police & Incident Report – Lowndes County Sheriff's Department." However, plaintiff failed to attach such identified

report. Even if plaintiff had attached such report, this “initial” disclosure was received following the close of discovery. Within this Court’s Initial Scheduling Order, the discovery deadline was April 17, 2007. Upon granting the Joint Motion for Extension of Discovery Deadline, discovery was to be completed by May 17, 2007. Defendants have not been afforded the opportunity to review this document or examine anyone with knowledge about such document. Furthermore, any police or incident report would be inadmissible as Hearsay under FRE 802.

WHEREFORE, these Defendants, Emergystat, Inc. and Christopher Brown, respectfully request this Court to prohibit Plaintiff from calling Lenay Martin, Donald Richardson or any of the witnesses identified above in paragraph 2 to testify; and from offering a “Police & Incident Report – Lowndes County Sheriffs Department” exhibit into evidence.

Respectfully submitted,

s/ Celeste Holpp

Celeste P. Holpp

Bar Number: ASB-0013-A50C

Attorney for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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